

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**ZIA HILLS CENTRAL FACILITY
(CONOCOPHILLIPS) FOR AN AIR QUALITY PERMIT,
NO. 7746-M8**

AQB 21-36

HEARING OFFICER'S REPORT

I. INTRODUCTION

Applicant ConocoPhillips Company ("COPC") operates the Zia Hills Facility ("Facility"), a central gathering facility located in Lea County, New Mexico. The Facility receives oil and gas from wells and compresses and dehydrates natural gas before sending them to sales lines. Oil, gas, and water flow separately into the facility. Gas is dehydrated and then reinjected for gas lift or compressed to the sales line. Oil is stabilized then temporarily stored in tanks before being sold via pipeline. Water is processed, then temporarily stored before being shipped offsite via pipeline. Engine emissions are controlled using engine catalysts and emissions from dehydrators are controlled by reboilers and condensers. The Facility also uses a vapor recovery unit (as well as a backup) and three flares to control emissions.

The Facility currently operates under the General Construction Permit – Oil & Gas ("GCP") issued by New Mexico Environment Department ("NMED") in 2018. Accordingly, the Facility's operations are currently subject to the terms and conditions of the GCP, along with other state and federal emissions regulations, including 40 CFR Part 60 Subparts JJJJ and OOOOa.

COPC intends to increase production from the Facility to 18,503 barrels of oil per day and 120 million standard cubic feet per day. In accordance with 20.2.72 NMAC, COPC applied for a minor source New Source Review ("NSR") permit from the NMED to authorize the production increase and the equipment necessary to support the increase. NMED received

COPC's permit application ("Application 7746-M8") on January 11, 2021. After receiving Application 7746-M8, NMED engaged in an administrative and technical review. The administrative review is a "review of the presence of the required parts of the application, including the applicant's modeling analysis and the applicant's proof of public notice." Based on this review, NMED ruled Application 7746-M8 administratively complete on February 10, 2021. NMED also conducted a technical review for "verification of emissions calculations and a determination of applicable federal and state regulations." Following both an administrative and technical review, NMED issued the Draft Permit on May 11, 2021.

Based on WildEarth Guardians' ("WEG") request for a public hearing and its demonstration of significant public interest in the proposed permit, New Mexico Environment Department Cabinet Secretary, James Kenney ("Cabinet Secretary") granted a public hearing for ConocoPhillips' application 7746-M8 in a Public Hearing Determination dated June 1, 2021. On June 24, 2021, the Cabinet Secretary subsequently ordered a public hearing be held in the matter AQB 21-36 and appointed Gregory Chakalian to serve as Hearing Officer in this matter. Following a July 7, 2021, scheduling conference the Hearing Officer consolidated AQB 21-36 with nine separate cases regarding construction permit applications for nine other oil and gas facilities in southeast New Mexico. The Cabinet Secretary also affixed his signature to a Delegation of Authority on June 25, 2021, transferring all decision-making authority to Deputy Cabinet Secretary of Administration Rebecca Roose.

a. Revision of Construction Permits

A revision of an NSR permit is governed by 20.2.72 NMAC and required for modifications to the Facilities. 20.2.72.200 NMAC. A modification is defined as "any physical change in, or change in the method of operation of, a stationary source which results in an

increase in the potential emission rate of any regulated air contaminant emitted by the source, or which results in the emission of any regulated air contaminant not previously emitted . . .”

20.2.72.7.P NMAC.

b. Permit Issuance

After the determination that an application is administratively complete, NMED must decide whether a permit should be granted, granted with conditions, or denied. 20.2.72.207 NMAC. If there is significant public interest, the Secretary may delay issuing the permit and require a hearing be held. *Id.* NMED has specific bases to deny a permit revision. 20.2.72.208 NMAC.

c. Current Proceedings

NMED’s Office of General Counsel represented NMED through Christopher J. Vigil. NMED called the following individuals as witnesses: Rhonda Romero, Eric Peters, Angela Raso, Kathleen Primm, James Nellessen, Kirby Olson, Urshula Bajracharya, Vanessa Springer, Asheley Coriz, Julia Kuhn, and Melinda Owens.

COPC was represented by Scott Janoe and Harrison Reback of Baker Botts LLP. COPC called Dr. Roberto Gasparini as a witness. Dr. Gasparini is the Legal, Audit, & Enforcement Support Program Director at Spirit Environmental, LLC in Houston, Texas.

XTO was represented by Louis Rouse and Kristen Burby of Montgomery & Andrews, PA. XTO called Randy Parmley, Vice President, and principal engineer at DiSorbo Consulting, as a witness.

Crestwood was represented by Eric Waeckerlin and Courtney Shephard of Brownstein Hyatt Farber Schreck, LLP. Crestwood called Moshe Wolfe, senior environmental engineer for Crestwood, and Adam Erenstein, principal consultant with Trinity Consultants, as witnesses.

WEG was represented by Matthew Nykiel. WEG called Jeremy Nichols, Climate and Energy Program Director for WEG, as its sole witness.

d. Burdens and Standards for Decision

20.1.4.400.A(1) NMAC establishes the burdens of persuasion for each party to the hearing and states: “Burden of Persuasion: The Applicant or Petitioner has the burden of proof that a permit, license, or variance should be issued and not denied. This burden does not shift. The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed. Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” In turn, 20.1.4.400.A(3) NMAC states that “[t]he Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.”

In addition, New Mexico’s minor source permitting regulations at 20.2.72.207.D NMAC state that “[t]he department shall grant the permit, grant the permit subject to conditions, or deny the permit based on information contained in the department’s administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, a statement of matters officially noticed, and if a public hearing is held, the evidence submitted at the hearing. The applicant has the burden of demonstrating that a permit or permit revision should be approved.”

The determination of whether to issue a Draft Permit must be based on the evidence in the Hearing Record as defined by 20.1.4.7 NMAC.

e. Public Comment¹

¹ Public comment was taken in reference to all ten (10) permits during the consolidated public hearing.

General comment (non-technical) was taken from the public before and during the public hearing, both in writing and as sworn testimony. Five members of the public submitted written comment, one in favor and four opposed to the approval of the Draft Permits. The public member in favor cited fairness of rules and regulations for companies to operate in New Mexico. Those against, cited the air quality and ozone levels in Lea and Eddy Counties and the link between air pollution and climate change. Fourteen public members spoke during the two-day hearing (some of the members had also submitted written comment), all voiced their opposition to the air quality construction permits. The reasons mirrored the written comments but more focused on the potential for ozone pollution produced by oil and gas Facilities to harm human health and the environment. The comments were general in nature.

II. APPLICABLE LAW

New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 to 74-2-17

New Mexico Air Quality Regulations - Construction Permits, 20.2.72 NMAC

New Mexico Environment Department Permitting Procedures – 20.1.4 NMAC

III. RECOMMENDATION

Based upon the Hearing Record as defined in 20.1.4.7 NMAC, including the post-hearing submittals, I recommend that the proposed final Draft Permit be approved, as set forth in the Record with specific conditions to protect the public health and the environment. What follows is drawn from XTO, NMED, and WEG’s proposed findings of fact and conclusions of law based on the evidence that I found relevant, reliable and credible.

IV. FINDINGS OF FACT

Zia Hills Facility Background

1. ConocoPhillips Company is a Texas-based company and the owner/operator of the Zia Hills Central Facility, located in Lea County, New Mexico, Section 19, Range 32E, Township 26S. [AR No. 1, Bates 004-006].
2. Oil, gas, and water flow separately into the central gathering facility. Once there, gas is dehydrated and then either reinjected for gas lift or compressed to the sales line; oil is stabilized, temporarily stored in tanks, and then sold via pipeline; and water is processed, temporarily stored, and shipped offsite via pipeline. *See* COPC Amended Ex. 2 at 1.
3. The Zia Hills Facility uses engine catalysts, reboilers and condensers, a vapor recovery unit (as well as a backup), and three flares to control emissions. *See* COPC Amended Ex. 2 at 1.
4. The Zia Hills Facility currently operates under the General Construction Permit – Oil & Gas issued by NMED. *See* COPC Amended Ex. 2 at 1-2.
5. COPC has operated the Zia Hills Facility pursuant to the General Construction Permit since 2018. *See* COPC Amended Ex. 2 at 2.
6. Operations at the Zia Hills Facility are currently subject to the terms and conditions of the General Construction Permit, along with other state and federal emissions regulations, including 40 CFR Part 60 Subparts JJJJ and OOOOa. *See* COPC Amended Ex. 2 at 1-2.
7. COPC intends to increase production from the Zia Hills Facility to 18,503 barrels of oil per day and 120 million standard cubic feet per day. *See* COPC Amended Ex. 2 at 2.
8. Pursuant to 20.2.72 NMAC, COPC applied for a minor source NSR permit from NMED to authorize the production increase and the equipment needed to support the increase. *See* COPC Amended Ex. 2 at 2.

Motion in Limine

9. On October 12, 2021, XTO, Crestwood New Mexico Pipeline LLC (“Crestwood”), and ConocoPhillips Company (“ConocoPhillips”) submitted a pre-hearing motion in limine requesting that the Hearing Officer issue an order precluding WEG from offering any documents, testimony, or other evidence related to attainment of the 8-Hour Ozone National Ambient Air Quality Standards (“NAAQS”) in Eddy and Lea Counties and that any of the proposed permitting actions will cause or contribute to a violation of the ozone NAAQS based on the current statuses of the counties (collectively, “the ozone issues”). Joint Motion in Limine, October 12, 2021.
10. On October 20, 2021, the Hearing Officer held a status conference with all parties to clarify scheduling, order of testimony, and when the Hearing Officer would decide the ozone issues given the abbreviated timeline for motion practice outlined by an Order Granting In-Part Stipulation. At the call, it was determined that parties would meet thirty minutes prior to the start of the hearing, where the Hearing Officer would hearing oral argument and issue a decision and reasons in support thereof.
11. WEG filed a response to the Joint Motion in limine on October 22, 2021, requesting the Hearing Officer deny the Joint Motion. WEG Response to Joint Motion, October 22, 2021.
12. Prior to the start of the hearing, the parties’ counsel met with the Hearing Officer to argue the Joint Motion and response. The preliminary matter was transcribed verbatim by the court-reporter and held in a break-out room on the Zoom platform. The Hearing Officer determined that based on the parties stipulated facts and the attached January 2021 EIB decision in 20-21(A) and 20-33(A) (WEG Petitioner/Appellant) on point, testimony on ozone and

compliance with the ozone NAAQS was not relevant to the matters at issue in the hearing²⁴.

The Hearing Officer verbally issued his decision that no testimony related to the ozone issues would be permitted in the hearing. To gain admission into evidence, the parties amended their exhibits to redact the irrelevant testimony. Importantly, unredacted exhibits submitted on October 12, 2021, were received as offers of proof. Tr. Vol. 1, 40:13-19 (Chakalian).

13. A hearing was held on this matter on Monday, October 25, 2021, and continued until Tuesday, October 26, 2021. Tr. Vol. 1, 14:11-16 (Chakalian); Tr. Vol. 2, 289:1-4 (Chakalian).

14. The hearing was held both virtually via ZOOM and at a location in the area affected by the applications and began at approximately 9:00 AM each day. Tr. Vol. 1, 1:23-25 (Court Reporter); Tr. Vol. 2, 283:23-25 (Court Reporter).

Objection to WEG's Technical Testimony

15. WEG's witness Jeremy Nichols, has experience in participating in air quality regulation from the advocacy perspective having provided commentary on numerous rules, permits, and policies at the state and federal levels. Mr. Nichols has some college experience having completed some coursework in Geology and Women's Studies, however he does not hold any college degrees. WEG Ex. 2.

16. Mr. Nichols provided prefiled "technical" testimony on each of the ten facilities, however the issues brought up for each separate facility were substantially similar. To avoid being unduly repetitious, Mr. Nichols consolidated his written testimony as applied to each facility. The

²⁴ "I'm going to start with page 22 of the final order, conclusion number 100. Pursuant to long-standing EPA and NMED guidance, for a source to be considered to cause or contribute to ozone concentrations in excess of NAAQS, its impacts on ozone concentrations must be above the Significant Impact Level as established by the EPA. Now, we haven't even talked about Significant Impact Level because that doesn't come into consideration until a PSD is in effect, and PSD is not for minor sources. Sources that emit below 250 tons per year of an ozone precursor are minor sources for purposes of the Board's PSD permitting regulations. Pursuant to EPA guidance, NMED guidance and the Board's permitting regulations, which we are using today, a permit applicant for a minor source is not required to make an individual demonstration of its impacts on ambient ozone concentrations. So, if a permit applicant for a minor source is not required to make an individual demonstration of its impact on ambient ozone concentrations, then I don't see how it's relevant to accept evidence to controvert that." Tr. Vol. 1, 31:17,32:12. (Chakalian).

issues called out by Mr. Nichols in his written testimony included: issues with legal notice, enforceability of SSM/M emission limits, compliance with Title V, compliance tests, environmental justice, pneumatic controllers, NO₂ ambient air quality standards, lack of a modeling protocol, use a modeling report dated for 2019, legal notice to nearby Carlsbad Caverns, procedural concerns around an issued air permit, and excess emissions. *See* WEG Am. Ex. 1.

17. Mr. Nichols' concluded in his testimony that none of the permit applications nor NMED's proposed permits demonstrate that the permits comply with the requirements in the relevant state and federal statutes and regulations. WEG Am. Ex. 1 at 3.

18. During his testimony an objection was raised *Seeking* to disqualify Mr. Nichols as a technical expert based on his resume. Tr. Vol. 2, 342:20, 346:7. The parties voir dire revealed that Mr. Nichols did not have any technical training that would qualify him to provide an expert opinion or technical testimony regarding air quality, oil, and gas operations (including SSM/M), engineering, or environmental justice. Tr. Vol. 2, 333:17. The Hearing Officer reasoned that based on the definition of technical testimony pursuant to 20.1.4.7.A(22) NMAC ("as "scientific, engineering, economic or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing") it was clear that WEG's only witness lacked sufficient background or training to offer specialized, technical testimony on any issue. Further, Mr. Nichols resume made it clear that he does not have a law degree, is not a licensed attorney, and admitted he is not qualified to interpret regulations or otherwise offer legal testimony. Mr. Nichols' testimony was therefore given the weight of "general" comment. *See* 20.1.4.300.B(2) NMAC.

19. Moreover, Mr. Nichols agreed he did not have any specialized training that would elevate his testimony above lay testimony. Tr. Vol. 2, 344:12. To the extent WEG's testimony advances policy arguments, such policy arguments may not serve as a basis to deny a draft permit and do not qualify as "technical testimony." *See* NMAC 2.2.72.208. In sum, the general testimony WEG provided on the issues it did not concede at the hearing failed to provide any evidence against issuing the Draft Permits.
20. Toward the end of the Hearing, a verbal motion was made to strike the entire direct testimony of Mr. Nichols. After hearing additional argument from the parties, the Hearing Officer overruled the objection, reasoning that the parties had ample time to file a timely motion in limine to allow the Hearing Officer the time necessary to consider the drastic remedy.

NMED Review of Application 7746-M8

21. COPC submitted Application 7746-M8 to NMED on January 9, 2021. *See* AR at 0267; COPC Amended Ex. 2 at 2.
22. NMED received Application 7746-M8 on January 11, 2021. Upon receipt, COPC's modeling files were forwarded to the assigned Air Quality Board ("AQB") modeling staff member for review. *See* AR at 0367; NMED Ex. 29 at 3.
23. On January 26, 2021, AQB requested via email that COPC consultant Evan Tullos and COPC air permit contact Vivian C. Bermudez provide clarifications for Sections 1 and 3 and additional information to support Section 9 of Application 7746-M8. Mr. Tullos submitted the requested information, as well as documentation showing compliance with the public notice requirements of 20.2.72.203.B.1(b), to the Department in two emails, both sent on January 27, 2021. *See* AR at 0532-0549; NMED Ex. 29 at 3-4.

24. AQB requested via email on February 1, 2021, that Mr. Tullos provide information regarding emission factors gathered from stack test data for engines and clarification on the applicability of 20.2.77 NMAC to the engines. Mr. Tullos replied to NMED's information request on February 1, 2021, with the requested information and an update to Section 13 of Application 7746-M8 addressing applicability of 20.2.77 NMAC. *See* AR at 0557; NMED Ex. 29 at 4.
25. On February 8, 2021, NMED modeling staff confirmed via email to NMED that Application 7746-M8 could be ruled complete from a modeling perspective. *See* AR at 1167; NMED Ex. 29 at 4.
26. NMED requested via email on February 9, 2021, that COPC provide clarification on oil throughput in Table 2-L and engine emission calculations. *See* AR at 0566-0570; NMED Ex. 29 at 4.
27. On February 10, 2021, NMED deemed Application 7746-M8 administratively complete. *See* AR at 0571-0574; NMED Ex. 29 at 4. The permit fee was calculated based on fee units in 20.2.75 NMAC and applicable regulations, and Bureau staff generated an invoice for the permit fee. *See* NMED Ex. 29 at 4.
28. AQB staff sent the completion determination letter, including a copy of NMED's Legal Notice and Preliminary Determination ("Legal Notice"), and the invoice for the permit fee to COPC. *See* AR at 0571-0577; NMED Ex. 29 at 4-5. The Legal Notice was also sent to EPA Region 6; Erica LeDoux at EPA; and the State of Texas. *See* AR 1246-1252; NMED Ex. 29 at 5.
29. The Legal Notice was posted on the AQB public notice website on February 10, 2021. *See* AR 1253-1254; NMED Ex. 29 at 5.

30. COPC and COPC's consultants submitted several updates in response to NMED inquiries and requests for clarification between January 2021 and September 2021. NMED Ex. 29 at 5-6.
31. The Department sent a Draft Permit to COPC for review and comment on April 27, 2021. The Department requested comments no later than noon on May 4, 2021. COPC submitted comments on the Draft Permit on May 4, 2021, via email. *See* AR at 0960-1013, 1018-1051; NMED Ex. 29 at 7.
32. Following finalization by AQB staff, the final Draft Permit A version 05.06.21 was signed by Elizabeth Kuen and issued on May 11, 2021. *See* AR at 1056-1108; NMED Ex. 29 at 8.
33. AQB staff reviewed the emission calculations submitted in the application for all regulated equipment and the emission factors relied upon in those calculations. The facility emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, engine test stack data that was submitted to NMED, US EPA's AP-42 Compilation of Air Emissions Factors, or Texas Commission on 5 Environmental Quality (TCEQ) Air Emissions Factors, including TCEQ document RG- 360A/11(February 2012), as well as oil and gas industry software. *See* NMED Ex. 29 at 7.
34. The evidence supports the finding that emission factors used in Application 7746-M8's emission calculations are appropriate for this source type and approved by NMED. The approved calculated emission rates were used in the Bureau's air dispersion modeling analysis, which predicts concentrations of the National Ambient Air Quality Standards ("NAAQS"). *See* NMED Ex. 29 at 7.
35. The Department summarized the technical review of Application 7746-M8 in the Statement of Basis, which is a permitting record that includes a description and history of the Zia Hills

Facility, public response received by the AQB, a regulatory compliance discussion, and unique conditions in the permit. *See* AR at 0258-0266; NMED Ex. 29 at 7.

Public Outreach

36. Application 7746-M8 and the Legal Notice were posted on the AQB public notice webpage on February 10, 2021. *See* AR at 1253-1254; NMED Ex. 29 at 8.
37. The Legal Notice was published in the Hobbs-News Sun on February 17, 2021. As required by 20.2.72.206(A)(5) NMAC, interested parties were allowed 30 days to express an interest in the permit application in writing. The end of the 30-day comment period was March 19, 2021. *See* AR at 1255-1256; NMED Ex. 29 at 8.
38. NMED re-published a Legal Notice that had been revised to include an NMED email address as an additional option for submitting written comments. AQB's administrative staff sent the re-published Legal Notice to the Albuquerque Journal for publication, and it was published on May 22, 2021. This restarted the 30-day comment period, making June 21, 2021, the end of the comment period. *See* AR at 1259-1260; NMED Ex. 29 at 8.
39. Between May 18, 2021, and May 21, 2021, NMED updated AQB's public interest website to include additional documents associated with Application 7746-M8, including the revised Legal Notice; the original application; calculation updates; application updates; and draft permits. The revised draft statement of basis and revised Legal Notice were posted to the AQB public interest website on May 21, 2021. *See* NMED Ex. 29 at 8-9.

Initial and Second Citizen Letters

40. In response to a written expression of interest in Application 7746-M8 received from WEG, NMED sent an Initial Citizen letter to Matt Nykiel at WEG on May 21, 2021, via email and hard copy through the United States Postal Service. *See* AR at 1226-1230; NMED Ex. 29 at

9. The Initial Citizen letter is a template letter developed to comply with 20.2.72.20.B.1 NMAC, requiring the Bureau to “[n]otify each person who expressed an interest in writing in the permit application of the date and the location that NMED’s analysis was or will be available for review.” The letter confirms that citizens’ written comments will be included as part of the permit application record. The letter also provides general information about the permit process, the pending availability of NMED’s analysis, and the option to request a public hearing. *See* NMED Ex. 29 at 9.

41. On June 18, 2021, the Department sent a Second Citizen letter to Matt Nykiel at WEG via email and hard copy through the United States Postal Service. *See* AR at 12335-1236; NMED Ex. 29 at 9. The Second Citizen letter is a template letter to notify citizens that NMED’s analysis is available for review. The letter had a link to NMED’s analysis, including the Statement of Basis, the Draft Permit, and modeling review report, which were posted on the Zia Hills section of the AQB public interest webpage. *See* NMED Ex. 29 at 9-10.

42. Pursuant to 20.2.72.206.B(2) NMAC, the proposed permit could not be issued until at least 30 days after the Department’s analysis was available for review.

The Request for Hearing

43. WEG submitted comments to NMED on March 12, 2021, that included a request for a public hearing for Application 7746-M8. *See* AR at 1219-1223. The Department then submitted a Public Hearing Request Determination for WEG Related Permit Applications based upon WEG’s request. *See* NMED Ex. 29 at 9.

44. The NMED Cabinet Secretary Public Hearing Request Determination for the Zia Hills Facility was granted and signed on June 1, 2021. AQB notified both WEG and COPC via e-mail on June 7, 2021. *See* AR at 1231-1234; NMED Ex. 29 at 9.
45. On June 24, 2021, NMED Cabinet Secretary Kenney ordered a hearing and appointed the Hearing Officer. *See* AR at 1261-1262; NMED Ex. 29 at 10.
46. On July 2, 2021, AQB updated the public interest webpage with an updated red bold font language noting that the second 30-day comment period had begun. *See* AR at 1261-1262; NMED Ex. 29 at 10.
47. WEG submitted their second comments to NMED via email on July 16, 2021. *See* AR at 1239-1244; NMED Ex. 29 at 10.
48. On July 20, 2021, the Scheduling Order was filed, setting the start date for the public hearing as October 25, 2021. *See* Scheduling Order (entered 7/20/2021).

Modifications to Hearing Due to Public Health Emergency

49. On July 23, 2021, Governor Michelle Lujan Grisham entered Executive Order 2021-044 renewing the declaration of public health emergency in response to the continued spread of COVID-19 in New Mexico. *See* NMED Ex. 29 at 10.
50. On August 6, 2021, an Order Amending the Scheduling Order was filed to include notification that a hybrid virtual hearing would be held to accommodate members of the public who do not have access to a computer or an internet connection. *See* Order Amending Scheduling Order (entered 8/6/2021).
51. On August 16, 2021, NMED launched a new website design. A link to the documents for the Zia Hills Facility was included in the Department's Notice of Hearing. *See* NMED Ex. 29 at 11.

52. On August 31, 2021, the AQB public interest webpage was updated to include the August 27, 2021 Draft Statement of Basis. On September 8, 2021, the AQB public interest webpage was updated to include the August 31, 2021 updates. On September 22, 2021, the AQB public interest webpage was updated to include updates received through September 21, 2021, the NMED Events Calendar, and the Notice of Hearing. *See* AR at 1270-1273; NMED Ex. 29 at 11.

Notice and Public Outreach for the Hearing

53. In accordance with NMAC 20.1.4.200(C)(2), NMED prepared the Notice of Public Hearing regarding COPC's Application, providing that a virtual hearing would be held beginning on October 25, 2021, at 9:00 a.m. and provided a link as well as telephone numbers by which members of the public could participate in the virtual hearing. *See* AR at 1276-1279.

54. NMED's Notice of Hearing was translated into Spanish. *See* AR at 1280-1284.

55. NMED's Notice of Hearing included a brief description of the nature and location of the action to be considered in COPC's Application 7746-M8, including COPC's name and address; information as to how and where to obtain NMED's Draft Permit and COPC's Application 7746-M8; and the requirements for entering an appearance for the hearing, providing technical testimony for the hearing, or offering a general written or oral statement in writing before the hearing or verbally at the hearing. *See* AR at 1276-1279; NMAC 20.1.4.200(C)(2)(a)(ii), (iii), and (iv).

56. The Notice of Hearing also stated the applicable provisions of the New Mexico Administrative Code. *See* NMAC 20.1.4.200(C)(2)(a)(v).

57. On or about September 22, 2021, NMED:

- (i) emailed the Notice of Hearing in both English and Spanish to individuals and groups that had previously been directly notified about one of the permit applications or that submitted comments on a permit application. *See* AR at 1274-1350; *See* also NMAC 20.4.1.200(C)(2)(b)(ii).
- (ii) emailed the Notice of Hearing in both English and Spanish to EPA Region 6, Erica LeDoux and Mary Layton at EPA, Jeremy Nichols and Matthew Nykiel at WEG, TCEQ, CCNP, the Bureau of Land Management, the New Mexico State Land Office, and Lea County and Eddy County Managers. *See* AR at 1246-1252; *See* also NMAC 20.4.1.200(C)(2)(b)(iii).
- (iii) published the Notice of Hearing in both English and Spanish in the Hobbs News-Sun pursuant to NMED's request and at NMED's expense. *See* AR at 1255-1256; *See* also NMAC 20.1.4.200(C)(2)(b)(i) & (v).
- (iv) published the Notice of Hearing in both English and Spanish in the Albuquerque Journal pursuant to NMED's request and at NMED's expense. *See* AR at 1259-1260; *See* also NMAC 20.1.4.200(C)(2)(b)(i) & (v).

58. NMED sent requests for public service announcements in Spanish to run on Spanish radio stations that are broadcast in Lea County and Eddy County. AR at 1382-1396.

Sufficiency of Application 7746-M8 and Supporting Materials

59. The Zia Hills Facility is defined as a "minor source" for PSD purposes. *See* AR at 0219.

60. Application 7746-M8 must include the applicable information from 20.2.72.203 NMAC.

61. COPC submitted Application 7746-M8 using NMED's approved Universal Application form. *See* AR at 0004.

62. NMED reviewed Application 7746-M8 to confirm that it included all required parts of the application, including COPC's modeling analysis and COPC's proof of public notice. *See* NMED Ex. 29 at 3.
63. NMED ruled Application 7746-M8 administratively complete on February 10, 2021. *See* AR at 0267.
64. The Zia Hills Facility's emissions were calculated using Excel spreadsheets using manufacturer's data sheet emission factors, engine test stack data that was submitted to the Department, US EPA's AP-42 Compilation of Air Emissions Factors, or Texas Commission on Environmental Quality (TCEQ) Air Emissions Factors, including TCEQ document RG-360A/11 (February 2012), as well as oil and gas industry software. The emission factors used in the calculations are appropriate for this source type and are, thus, approved by NMED. *See* NMED Ex. 29 at 6-7.
65. To be issued an NSR permit, COPC's Application 7746-M8 must demonstrate that construction of the proposed facility will not cause or contribute to any violations of NAAQS or NMAAQs, PSD increments, or State Air Toxic pollutant requirements. *See* NMED Amended Ex. 11.
66. NAAQS are periodically reviewed by the Environmental Protection Agency and are designed to protect the most sensitive individuals. *See* NMED Amended Ex. 11.
67. PSD increments are designed to maintain the air quality of pristine areas. Toxic permitting thresholds prevent neighbors from being exposed to more than one percent of the amount that has been deemed acceptable for workers to be exposed to throughout the day. *See* NMED Amended Ex. 11.

68. COPC used an AERMOD model to evaluate potential air impacts from the Zia Hills Facility. AERMOD was developed by the American Meteorological Society/Environmental Protection Agency Regulatory Model Improvement Committee. EPA has approved AERMOD for use in air permitting. *See* COPC Amended Ex. 2 at 3.
69. NMED has established that AERMOD “is intended to be the standard regulatory model.” *See* AR at 0393.
70. NMED staff reviewed COPC’s modeling and determined that it was performed in accordance with the New Mexico Modeling Guidelines. *See* NMED Amended Ex. 11.
71. The Department maintains the New Mexico Modeling Guidelines to provide a basis for acceptable modeling analyses. These guidelines incorporate and interpret the most recent version of EPA’s Guideline on Air Quality Models, which was published in the Federal Register, Vol. 82, No. 10. The New Mexico Modeling Guidelines also incorporate other information and guidance, such as EPA memorandums. *See* NMED Amended Ex. 11.
72. Based on review of the Zia Hills Facility’s modeling data, NMED staff determined that if the facility operates in compliance with the terms and conditions of the Draft Permit, then it will not cause or contribute to any concentrations above state or federal ambient air quality standards or PSD increments. *See* NMED Amended Ex. 11.
73. NMED staff determined that the Zia Hills Facility has satisfied all modeling requirements and the permit may be issued. *See* NMED Amended Ex. 11.

Sufficiency of the Draft Permit

74. A permit is an enforceable legal document, and will include emission limits, methods for determining compliance on a regular basis, and will place monitoring, recordkeeping, and

reporting requirements to ensure and verify compliance with the requirements of the permit.
See NMED Ex. 29 at 11.

75. Conditions in Part A of the permit are Facility Specific Requirements, unique to the facility.

They are site-specific and based on information provided in the application. Conditions in Part B of the permit are General Conditions and standard language which generally apply to all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. *See* NMED Ex. 29 at 12.

76. Permit conditions establish ongoing testing and monitoring requirements for processes and pieces of equipment to ensure the equipment is operating in accordance with the permitted emissions limits. *See* NMED Ex. 29 at 12.

77. COPC's witness confirmed that the Draft Permit contains terms and conditions typical of a minor source NSR permit. *See* COPC Amended Ex. 2 at 6.

78. NMED's and COPC's witnesses confirmed that the Draft Permit establishes reasonable and effective emissions limits, covers all point sources of emissions at the Zia Hills Facility, and establishes detailed monitoring, recordkeeping, and reporting obligations. *See* NMED Ex. 29 at 11, 14-16, 18; COPC Amended Ex. 2 at 6.

79. NMED's and COPC's witnesses determined that if the Zia Hills Facility is operated in compliance with the terms and conditions of the Draft Permit, it will comply with all applicable air regulations and will not cause or contribute to any exceedance of applicable air quality standards, including NAAQS and PSD increments. *See* NMED Amended Ex. 11; NMED Ex. 29 at 19-20; COPC Amended Ex. 2 at 6.

80. NMED staff determined that the Draft Permit complies with all air quality regulations and contains demonstrations of compliance for all conditions and emission limits to ensure Ambient Air Quality Standards. *See* NMED Ex. 29 at 19-20.

81. NMED recommended that the Secretary uphold NMED's decision to approve issuance of this permit. *See* NMED Ex. 29 at 20.

Bases for Denial

82. COPC's witness evaluated the eight regulatory bases for denial of the Draft Permit and determined that none apply. *See* COPC Amended Ex. 2 at 5.

WEG Comments

83. WEG submitted two separate comment letters to NMED on March 12, 2021, and July 16, 2021, that raised concerns with Application 7746-M8 and the Draft Permit. *See* AR at 1219-1223, 1239-1243.

84. WEG's concerns related to the attainment status for the 8-Hour Ozone NAAQS; the use of significant impact levels in determining source impacts; compliance with Environmental Justice Executive Order 2005-056; compliance with toxic air pollutant permitting requirements; coverage of all point sources and potential adjacent sources; the enforceability of emissions limits, including limits on SSM and MF emissions; alleged issues with COPC's modeling; and other "miscellaneous issues." *See* AR at 1219-1223, 1239-1243.

85. NMED reviewed and responded to each of WEG's concerns. NMED determined that the comments do not raise any substantive issues that indicate the Draft Permit should not be issued. *See* NMED Ex. 29 at 12-19.

86. During the hearing, WEG's witness acknowledged that NMED's pre-filed written testimony resolved all but two issues for the Zia Hills Facility. *See* 10/26/2021 Hearing Transcript at TR-332:21-25-333:1-5.
87. The only issues WEG carried through the hearing concerned compliance with Environmental Justice Executive Order 2005-056 and enforceability of emissions limits in Condition A107. *See* 10/26/2021 Hearing Transcript at TR-332:21-25-333:1-5.

Executive Order 2005-056/Environmental Justice

88. WEG took issue with NMED's compliance with Environmental Justice Executive Order 2005-056 in issuing the Draft Permit. *See* WEG Amend. Ex.. 1 at 98.
89. Executive Order 2005-056 directs NMED to utilize available environmental and public health data to address impacts in low-income communities and communities of color as well as in determining siting, permitting, compliance, enforcement, and remediation of existing and proposed industrial and commercial facilities. *See* WEG Amend. Ex.. 1 at 18.
90. WEG asserted that absent information concerning NMED's review, a determination granting the proposed permit would violate Executive Order 2005-056. *See* WEG Amend. Ex.. 1 at 98.
91. NMED provided details of its review and testified that for each permitting action, NMED uses the EPA EJSCREEN tool to evaluate demographic information for an area around the facility; the area is 4 miles except smaller within urbanized areas. Data from EPA EJSCREEN is evaluated by the permit writer and their manager to evaluate if any additional outreach needs to be done beyond the regulatory requirements. This assessment includes factors such as number of households, per capita income, percent of Linguistically Isolated

Households, and percent minority population. Past involvement by the public in air permitting for the facility is also reviewed. *See* NMED Ex. 29 at 17.

92. COPC's witness testified that the EJSCREEN tool is typically used in air permitting exercises like this as the basis for environmental justice evaluations. *See* 10/26/2021 Hearing Transcript at 391:21-392:4.

93. COPC's witness testified that COPC's air dispersion modeling shows that surrounding areas are not impacted by the Zia Hills Facility and there are no populations that are disproportionately negatively impacted by the Zia Hills Facility. *See* 10/26/2021 Hearing Transcript at 392:25-393:6.

94. WEG did not present any evidence indicating that NMED failed to comply with the Executive Order 2005-056 or that the Zia Hills Facility will cause a disproportionate impact on any group of people.

95. Compliance with Executive Order 2005-056 and environmental justice principles are not a listed basis for permit denial in NMSA 1978, Section 74-2-7.C or 20.2.72.208 NMAC.

Enforceability of Emissions Limits in Condition A107

96. WEG took issue with the enforceability of the emissions limits in Condition A107. *See* WEG Amend. Ex. 1 at 96-97.

97. WEG asserted that it is unclear how gas vented during SSM and MF events will be accurately measured to ensure compliance with their respective annual VOC emission limits. *See* WEG Amend. Ex. 1 at 96-973.

³ "The proposed permit does not establish a particular methodology for quantifying the amount of emissions released during these events. Absent a required quantification methodology, the Applicant would have no obligation to monitor and record these emissions according to an understood method that ensures the emissions are accurately quantified. In other words, nothing in the proposed permit would prevent the Applicant from quantifying the total emissions during SSM/M events based on more than a guesstimate. As such, the Department (and, in effect, the public) cannot be assured that the monitoring data it receives was discerned using an appropriate methodology that accurately quantifies the emissions released during SSM/M events." WEG's Closing Argument at pp. 10-11.

98. SSM and MF conditions require tracking of the VOC emissions based on the inlet gas analysis (% VOC) and the volume of gas released during the SSM or MF events. *See* NMED Ex. 29 at 14:9-14.
99. The Draft Permit requires monitoring and recordkeeping for all SSM and MF events. Malfunctions result in venting to depressurize the portion of the facility experiencing a malfunction. The volume is calculated based on the gas volume within the equipment which is de-pressurized. *See* NMED Ex. 29 at 14:9-14.
100. For SSM activities, the releases are determined based on the gas composition, the volume of gas released during an activity, and the number of activities. For compressor blowdowns, the volume of gas from compressor blowdowns is based on the known interior gas volume within the compressor and the number of times the compressor blows down (releases pressure). The amount of gas is determined from the volume within the line being serviced and the gas composition. The same approach is used for other miscellaneous SSM activities. *See* NMED Ex. 29 at 15.
101. Because SSM represents various activities, SSM does not have a single volume or capacity. The volumes used in the calculations are based on engineering knowledge of the individual equipment undergoing the startup, shutdown, or maintenance. Condition A206.C requires one or more gas flowmeters equipped with a chart recorder or data logger to monitor the flow of gas sent to FL1. Condition A206.C also requires model estimates using Department approved methods and updates annually based on the current gas analysis, actual tank throughput (Conditions A203.A, A203.B, A203.C, A203.D, and A203.E), and actual VRU downtime to determine flow rates to FL2 and FL3 (Condition A203.F). *See* NMED Ex. 29 at 15.

102. The methodology for calculating emissions vented is based on engineering knowledge represented in the application that was submitted by COPC, which NMED approved and reviewed⁴. *See* NMED Ex. 29 at 15.
103. WEG asserted that the Draft Permit authorizes pound per hour limits for FL1 and FL2/FL3 that would allow the Zia Hills Facility to exceed its annual limits. *See* WEG Amend. Ex. 1 at 97.
104. NMED staff testified that establishment of hourly emission limits in any permit does not imply that these emissions are permitted for every hour of the year. Both hourly and annual emission limits are each separately enforceable in an air quality permit. NMED establishes hourly limits to ensure compliance with short-term air quality standards and annual emission limits to ensure compliance with long-term air permitting limits. Compliance with the annual limits established in Table 107.A are demonstrated by operating in accordance with the requirements in Conditions A206.C and A206.D and completing monitoring and recordkeeping in Conditions A107.C and A107.D. Records of monthly rolling 12-month total emissions demonstrate compliance with annual limits. *See* NMED Ex. 29 at 16.
105. COPC's witness testified that sources are typically permitted with both hourly and annual limits. If a source exceeds the hourly limits, it is subject to enforcement by the applicable regulatory authority. Similarly, if the source exceeds annual emissions limits, it is subject to enforcement, regardless of its compliance with hourly limits. *See* 10/26/2021 Hearing

⁴ Credible evidence was taken on rebuttal that directly refutes WEG's argument detailed in footnote 2 above: "Well, permits typically include requirements, whether it's an emissions limit or some sort of standard that have to be met. But they don't often spell out precisely and exactly the methodology that you need to carry out in order to figure out what exactly is emitted. Those are typically left to the best understanding of the operations that were in place at the time, the physical setup of the equipment there. So there's a number of factors that -- that will go into that, and -- and so the exact and precise methodology isn't always stipulated. In fact, the permits would actually get to be quite long and voluminous if you did actually roll up all of those calculation methodologies in the permit." *See* 10/26/2021 Hearing Transcript at TR-389:1-14.

Transcript at TR-383:3-12. The Zia Hills Facility's emissions are therefore necessarily constrained by annual emission limits.

106. No person presented any evidence that Application 7746-M8 should be denied, or that the Draft Permit should not be granted for the reasons contained in NMSA 1978, Section 74-2-7.C of the State Act or 20.2.72.208 NMAC.

V. CONCLUSIONS OF LAW

1. Application 7746-M8 complies with all the applicable requirements of 20.2.72.203 NMAC, all applicable requirements of the State Air Quality Act ("State Act") and Federal Clean Air Act (Federal Act"), and the applicable Air Quality Control Regulations for issuance of a construction permit.
2. The Secretary of Environment has jurisdiction over the subject matter of COPC's application and the parties to this proceeding and is authorized by the State Act to issue or deny air quality construction permits based upon information contained in the Hearing Record (as defined in 20.1.4.7 NMAC to include the Administrative Record).
3. Pursuant to NMSA 1978, Section 74-2-7.C, NMED may deny an application for a construction permit if it appears that the construction: (a) will not meet applicable standards, rules or requirements of the State Act or Federal Act; (b) will cause or contribute to air contaminant levels more than a national or state standard; or (c) will violate any other provision of the State Act or Federal Act.
4. Pursuant to 20.2.72.208 NMAC, NMED shall deny an application for a permit if, after considering emissions after controls: (a) it appears that the construction will not meet applicable regulations adopted pursuant to the State Act; (b) the source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source

Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board; (c) for toxic air pollutants *See* 20.2.72.400 NMAC – 20.2.72.499 NMAC; (d) the construction will cause or contribute to air contaminant levels in excess of any NAAQS or NMAAQs unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable; (e) the construction, modification, or permit revision would cause or contribute to ambient concentrations in excess of a PSD increment; (f) any provision of the State Act will be violated; (g) it appears that the construction of the new source will not be completed within a reasonable time, or (h) the department chooses to deny the application due to a conflict of interest in accelerated review provided for under Subsection “C” of 20.2.72.221 NMAC.

5. No credible evidence was presented at the hearing to support any basis for denying a permit under NMSA 1978, Section 74-2-7.C or 20.2.72.208 NMAC.
6. NMSA 1978, Section 74-2-7.D authorizes NMED to impose conditions on a construction permit, including: (a) a requirement that the source install and operate control technology, determined on a case-by-case basis, sufficient to meet applicable standards, rules and requirements under the State Act or Federal Act; (b) individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the State Act or Federal Act, or the emission rate specified in the permit application, whichever is more stringent; (c) compliance with federal New Source Performance Standards, Emission Standards for Hazardous Air Pollutants and Maximum Achievable Control Technology Standards; (d) reasonable restrictions and limitations not relating to emission limits or emission rates; or (e) any combination of the above.

7. 20.2.72.210.B NMAC repeats the statutory authority to impose conditions in a construction permit, but for a modification, this authority applies only to the facility or facilities involved in the modification.
8. The conditions proposed by NMED satisfy the requirements of NMSA 1978, Section 74-2-7.D and 20.2.72.210.B NMAC.
9. COPC has complied with all requirements of the State Act and the New Mexico Air Quality Control Regulations for the filing of Application 7746-M8.
10. COPC has supported its burden to demonstrate that its operations at the Zia Hills Facility do not and will not pose an undue hazard to public health, to the environment, or to property.
11. COPC has demonstrated that air emissions at the Zia Hills Facility do not and will not cause or contribute to exceedances of NAAQS, NMAAQs, or PSD increments.
12. COPC and NMED have fully complied with the requirements of Environmental Justice Executive Order 2005-056.
13. The emission limits in Condition A107 of the Draft Permit concerning FL1, FL2/3, SSM, and MF are enforceable.
14. Application 7746-M8, the public hearing, and the administrative record reveal no basis under the State Act, or applicable regulations, or the Environmental Justice Executive Order 2005-056 upon which to deny the Draft Permit to COPC.
15. The permit conditions proposed by NMED in the Draft Permit are enforceable and necessary and appropriate to protect human health and the environment and to ensure compliance with the State Act and applicable regulations.

16. Issuance of an air quality construction permit to COPC, as requested in Application 7746-M8 and with the operational limits, controls, requirements, and emissions limits in the Draft Permit, is in conformance with the State Act and applicable regulations.

VI. RECOMMENDED FINAL ORDER

A draft Final Order consistent with the recommendations above is attached and incorporated by reference.

Respectfully submitted,

**Gregory
Chakalian**

Digitally signed by
Gregory Chakalian
Date: 2021.12.27 11:11:21
-07'00'

GREGORY ARA CHAKALIAN
Administrative Law Judge,
Office of Public Facilitation

Certificate of Service

I hereby certify that on December 27, 2021, a copy of the **Hearing Officer's Report** was sent to the persons listed below:

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